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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
|-----------------|-------------|----------------------|---------------------|
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09/408,634

09/30/99

WISNIEWSKI

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AVERP2514USA

QM32/0605

WILLIAM C TRITT
RENNER OTTO BOISSELLE & SKLAR PLL
1621 EUCLID AVENUE
19TH FLOOR
CLEVELAND OH 44115

EXAMINER

HYLTON, R

ART UNIT

PAPER NUMBER

3727

DATE MAILED:

11
06/05/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/408,634

Applicant(s)

WISNIEWSKI ET AL.

Examiner

Robin A. Hylton

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2001.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 18 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17, 20-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 1999 is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

DETAILED ACTION

Election/Restrictions

1. This application contains claims 18 and 19 drawn to an invention nonelected with traverse in Paper No. 8. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144). See MPEP § 821.01.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the force of the container contents applied distant from the bonded edge of the first and second layers along the separation interface must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: numerous reference characters such as 81, 82, 84, 61, and 62. Correction is required.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "85" has been used to designate both a cover layer and an edge of the seal in figure 8. Correction is required.

5. The drawings are objected to because the specification indicates a container "83" and junction "85" while figure 8 shows container "84" and cover layer "85" and edge "85", respectively. Correction is required.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

a. Correction of Informalities -- 37 CFR 1.85; 1097 O.G. 36

New formal drawings must be filed with the changes incorporated therein. The art unit number, application number (including series code) and number of drawing sheets should be written on the reverse side of the drawings. Applicant may delay filing of the new drawings until receipt of the "Notice of Allowability" (PTOL-37 or PTO-37). If

Art Unit: 3727

delayed, the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the "Notice of Allowability". The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

b. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner **before** the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.

Timing of Corrections

Applicant is required to submit acceptable corrected drawings within the three month shortened statutory period set in the "Notice of Allowability" (PTO-37). Within that three month period, two weeks should be allowed for review of the new drawings by the Office. If a correction is determined to be unacceptable by the Office, applicant must arrange to have an acceptable correction re-submitted within the original three month period. Therefore, applicant should file corrected drawings as soon as possible.

Failure to take corrective action within the set (or extended) period will result in **ABANDONMENT** of the application.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 15-22 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The disclosure, as originally filed, sets forth the force of the container contents to be applied distant from the separation interface (p. 18, lines 14-16). However, claims 15 and 20 as amended include the limitation of "along" the separation

Art Unit: 3727

interface. It appears the separation interface is being redefined by the added claim limitations.

This is a **new** matter rejection.

8. Claims 1-17 and 20-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrases "bonded edge" and "non-bonded edge" render the claims ambiguous. It is unclear if this is setting forth the edges of the layers as being bonded, or not bonded, together or the edge of the closure not bonding to the container (as clearly set forth in the specification).

It is unclear if both of the lower surface and upper surface of both the first and second layers of the closure are bonded with adhesive in claims 8, 9 13 and 14. It is suggested that the term "respectively" be inserted to indicate that only one of the surfaces of each layer has adhesive (if that is in fact the case).

Claim Rejections - 35 USC § 102

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 1,2,5-7,10 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Genske et al. (US 5,160,767). See figure 10A for non-bonding edge.

11. Claims 1-7,10,11, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Hayward (US 5,353,943). First layer **36** and second layer **35** separate (col. 6, lines 7-11) which can be of different materials (col. 9, lines 16-20), and has a peel strength in the range of 1.5 pounds to 4.5 pounds. This range is about 30-400 grams/2-inch width at 90 degree peel. Figures 13 shows the layers of the closure have an edge which is not bonded to the container flange.

Claim Rejections - 35 USC § 103

12. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Genske in view of Hayward (US 5,353,943).

Genske teaches the claimed closure except for the peel strength.

Wayward teaches a closure having a peel strength in the range of 1.5 pounds to 4.5 pounds.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Wayward to the closure of Genske. Doing so would provide a peelable seal which is a relatively easy to remove from an associated container.

13. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Genske.

Genske teaches the claimed closure except for a portion of the lower surface or the upper surface being free of adhesive.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have an edge of one of the layers of the closure free of adhesive to allow for a separation between the layers for peelable separation therebetween.

14. Claims 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Genske in view of Hayward (US 5,353,943).

Genske teaches the claimed closure except for the peel strength.

Wayward teaches a closure having a peel strength in the range of 1.5 pounds to 4.5 pounds.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Wayward to the closure of Genske. Doing so would provide a peelable seal which is a relatively easy to remove from an associated container.

Regarding claims 13 and 14, Genske is silent regarding a portion of the lower surface of the upper surface of the layers being free of adhesive. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have an edge of one of the layers of the closure free of adhesive to allow for a separation between the layers for peelable separation therebetween.

15. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hayward in view of Genske.

Wherein an argument can be made that Hayward discloses the claimed invention except for specifically setting forth the material of the second layer as being derived from a styrene, a vinyl polymer, a polyurethane, an acrylic polymer, or a nylon, Genske teaches a multi-layer closure having a second layer of a material derived from a styrene, a vinyl polymer, a polyurethane, an acrylic polymer, or a nylon.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Genske to the closure of Hayward. Doing so would provide an alternative material selected on the basis of its suitability for the intended use as is old and well known in the closure art.

16. Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greer et al. (US 6,032,854) in view of Freedman (US 4,925,714).

Greer discloses the claimed container except for the multi-layer closure structure.

Freedman discloses utilizing a closure having two different polymeric layers which easily separate for opening the container to which it is sealed.

It would have been obvious to one of ordinary skill in the art to modify the container of Greer in view of Freedman to provide closures each having two different polymeric layers which easily separate for opening the container to which it is sealed.

Art Unit: 3727

17. Claims 1,5-8,10-13,15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burns (US 4,690,322) in view of Hayward.

Burns discloses an envelope comprising a reusable closure. Burns does not disclose the material of the closure layers **17, 19** to be different nor the peel strength of the closure.

Hayward discloses a closure comprising two polymer materials and a peel strength in the range of 1.5 pounds to 4.5 pounds.

It would have been obvious to one of ordinary skill in the art to modify the closure of Burns in view of Hayward to provide the closure of two different polymeric films having a peel strength in the range of 1.5 pounds to 4.5 pounds as an alternative material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Response to Arguments

18. Applicant's arguments filed March 28, 2001 have been fully considered but they are not persuasive.

With respect to the envelopes of Burns and Greer, the closure is defined as being from the fold line to the uppermost edge of the flap. The adhesive does not extend to these edges. Thus, the patents structurally meet the claim (since applicant has not set forth the edges in a structural manner which precludes such a reading of the prior art references).

Regarding applicant's assertion that the claimed instant invention does not set forth a resealable adhesive whereas Burns does is an irrelevant point since the transitional phrase "comprising" does not preclude a resealable adhesive from the prior art reference. Furthermore, the resealability of the adhesive does not affect its peelability.

Art Unit: 3727

Conclusion

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

20. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703)305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence is being facsimiled to:

Assistant Commissioner for Patents
Washington, D.C. 20231
on _____ (date).

Typed or printed name of person signing this certificate

Signature _____

Date _____

Art Unit: 3727

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner can normally be reached on Monday - Friday from 9:30 a.m. to 5:00 p.m. (Eastern time).

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703)306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148. The fax phone number for this Group is (703) 305-3579.

Robin A. Hylton/rah
May 31, 2001



Allan N. Shoap
Supervisory Patent Examiner
Group 3700